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IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

EPILEPSY ASSOCIATION OF UTAH, a Utah non-profit corporation; CHRISTINE STENQUIST; DOUGLAS ARTHUR RICE; TRUCE, a Utah non-profit corporation; NATHAN KIZERIAN; SHALYCE KIZERIAN; ANDREW TALBOTT, M.D., Plaintiffs, v. GARY R. HERBERT, Governor of the State of Utah, in his official capacity; JOSEPH K. MINER, M.D., MSPH, Executive Director, Utah Department of Health, in his official capacity, Defendants.	**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** Case No.: 180909139 Judge: Todd Shaughnessy

Plaintiffs, by and through counsel, bring this action seeking:

(1) a declaratory judgment that 2018 Utah H.B. 3001 ("H.B. 3001"), which was passed by the Utah Legislature and signed into law by Governor Herbert on December 3, 2018, and which extensively amended the Utah Medical Cannabis Act ("Initiative Statute"), enacted pursuant to the 2018 Utah Proposition 2 ballot initiative ("Proposition 2"), and the enactment, enforcement, and implementation of H.B. 3001, violate the people's right to legislate through direct-democracy initiatives under Article VI, Section 1 of the Utah Constitution;

(2) a declaratory judgment that, pursuant to Article VI, Clause 2 of the United States Constitution ("the Supremacy Clause"), federal laws, including at least the Controlled Substances Act, 21 U.S.C. § 801, et seq. ("CSA") and The Drug-Free Workplace Act of 1988, 41 U.S.C. 81, et seq. ("Drug-Free Workplace Act"), preempt, and therefore render unconstitutional and invalid, all provisions of H.B. 3001 (including, at the least, the entirety of Part 6 of Utah Code Ann. § 26-61a-101 ("Utah Medical Cannabis Act")) that require anyone, including the Utah Department of Health or any local health department, to participate in (a) the procurement of marijuana, a marijuana product, or a marijuana device (*i.e.,* drug paraphernalia); (b) the preparation of marijuana, a marijuana product, and marijuana devices; (c) the

transport of marijuana; (d) the distribution of marijuana; (e) the acceptance of payments for marijuana; (f) the processing of requests for marijuana; (g) the deposit of funds collected for the sale or distribution of marijuana; (h) a "state central fill medical cannabis pharmacy;" and (i) ensuring the delivery of marijuana, a marijuana product, or a marijuana devise to any local health department or any person within the State of Utah;

(3) a declaratory judgment that the Initiative Statute, as enacted by a majority of voters voting on Proposition 2, is reinstated as effective law, and of the same status it had as law from December 1, 2018, until the enactment of H.B. 3001 on December 3, 2018;

(4) a declaratory judgment that any expenditures of public monies by the state of Utah, the Utah Health Department, any county in the state of Utah, or county-affiliated health department or other entity in the state of Utah for (a) the procurement of marijuana, a marijuana product, or a marijuana device (*i.e.,* drug paraphernalia); (b) the preparation of marijuana, a marijuana product, and marijuana devices; (c) the transport of marijuana; (d) the distribution of marijuana; (e) the acceptance of payments for marijuana; (f) the processing of requests for marijuana; (g) the deposit of funds collected for the sale or distribution of marijuana; (h) a "state central fill medical cannabis pharmacy;" and (i) ensuring the delivery of marijuana,

a marijuana product, or a marijuana devise to any local health department or any person within the State of Utah, is an illegal public expenditure, to be immediately enjoined by the Court;

(4) temporary, preliminary, and permanent injunctive relief prohibiting Defendants from enforcing, giving effect to, or otherwise taking action pursuant to H.B. 3001 and mandating that the Initiative Statute immediately be enforced and given effect; and

(5) an award of all fees and costs in this action, pursuant to 42 U.S.C. § 1988 and pursuant to the equitable powers of this Court.

INTRODUCTION

1. This is an action for declaratory and injunctive relief arising from the violation by the Utah Legislature of the fundamental constitutional right of the People to pass legislation through the direct-democracy initiative process under Article VI, Section 1 of the Utah Constitution, without legislative undermining of that right through subsequent legislation and the preemption by federal law of H.B. 3001, which, contrary to the Supremacy Clause of the United States Constitution, requires the violation of federal law, including the CSA and the Drug-Free Workplace Act.

2. The People of the state of Utah exercised their constitutionally vested legislative power by passing, through a majority vote at the most recent election, Proposition 2, which vastly expanded access for patients to medical cannabis through a private, yet highly regulated, market; authorized the establishment of private facilities to grow, process, test, and sell medical cannabis; and set forth limited circumstances in which patients could grow cannabis plants for personal medicinal use.

3. In direct contravention of the expressed will of the People, Governor Gary Herbert called a special session of the Utah Legislature on the earliest possible date—a mere two days, the first business day—after the effective date of the Initiative Statute—with the intent of undermining core purposes of Proposition 2 by radically reducing and burdening the access of patients to medical cannabis.

4. In further direct contravention of the expressed will of the People, as reflected in the majority vote for Proposition 2, the Legislature voted to dramatically undermine core purposes of Proposition 2 and the Initiative Statute by radically amending, and essentially replacing, the Initiative Statute with the passage of H.B. 3001, which deprives, reduces, and unreasonably burdens access to medical cannabis; drastically reduces the authorization for private facilities to sell medical cannabis; transforms a private, yet highly regulated, market for the purchase,

distribution, and sale of medical cannabis into a state-run and state-controlled market in which state and local government employees and agencies or departments are required to blatantly violate the CSA and the Drug-Free Workplace Act, and completely eliminates the opportunity for any patients to grow cannabis for their personal medicinal use, regardless of their lack of reasonable access to a medical cannabis dispensing facility.

5. H.B. 3001 compels the Utah Health Department or local health departments to procure, prepare, and distribute marijuana, and to accept payments for marijuana, process requests for marijuana, and deposit funds collected for the sale or distribution of marijuana, all in direct contravention of federal laws, including the CSA and the Drug-Free Workplace Act, which preempt H.B. 3001 and, pursuant to the Supremacy Clause, render H.B. 3001 (or at least Section 6 of H.B. 3001) unconstitutional and invalid.

PARTIES

6. Plaintiff TRUCE (also known as "Together for Responsible Use and Cannabis Education") is a Utah non-profit corporation headquartered in Davis County, Utah. TRUCE is a group of concerned patients and caregivers that advocates for safe, legal access to medical cannabis in Utah. TRUCE and members of TRUCE are directly and adversely affected by H.B. 3001 because (1) it severely reduces or

eliminates their access, or the access of people in their care, to medical cannabis and (2) it unconstitutionally undermines or entirely defeats core purposes of Proposition 2, which was advocated by TRUCE and its members and for which many of TRUCE's members worked extremely hard and successfully through signature-gathering and the campaign leading up to the passage of Proposition 2.

7. Plaintiff Epilepsy Association of Utah ("EAU") is a Utah non-profit corporation headquartered in Lehi, Utah County, Utah. The EAU is dedicated to enhancing the quality of life for all individuals living with epilepsy and seizure disorders and supporting people who provide care for people with epilepsy and seizure disorders. EAU and its members are directly affected by H.B. 3001 because (1) it severely reduces or eliminates their access, or the access of people in their care, to necessary medical cannabis and (2) it unconstitutionally undermines or entirely defeats core purposes of Proposition 2, which was advocated by EAU and its members and for which EAU and many of its members worked extremely hard and successfully through signature-gathering and the campaign leading up to the passage of Proposition 2.

8. Plaintiff Christine Stenquist ("Stenquist") is and was at all material times a resident of Kaysville, Davis County, Utah. Stenquist is the President and Executive Director of TRUCE. Stenquist suffered an acoustic neuroma, then,

following unsuccessful surgery, was later diagnosed with fibromyalgia, migraine headaches, occipital neuralgia, and trigeminal neuralgia, which is known as the "suicide disease" because of the extreme and often unrelenting pain it causes. As a result of her medical condition, and despite prescription medications, Stenquist was in chronic pain, nauseated, and bed-ridden for the majority of time during a 16-year period. Stenquist was able to find enough relief from her symptoms through the use of cannabis that she was able to again eat solid foods, was no longer bed-ridden, and is able to advocate for safe, legal access to medical cannabis for herself and other people of Utah. Stenquist was a sponsor of the "Application for an Initiative or Referendum," filed on June 26, 2017, with the Office of the Lieutenant Governor, and which led to Proposition 2. Stenquist canvassed for petition signatures in support of Proposition 2, raised funds in support of Proposition 2, and worked vigorously for many months to encourage others to vote in support of Proposition 2. Stenquist is directly and adversely affected by H.B. 3001 because (1) it severely reduces or eliminates her access to necessary medical cannabis, (2) it unconstitutionally undermines or entirely defeats core purposes of Proposition 2, which was advocated by Stenquist and for which Stenquist worked extremely hard and successfully through signature-gathering and the campaign leading up to the passage of Proposition 2, and (3) Stenquist is a State of Utah and Davis County taxpayer and is

opposed to illegal expenditures by the State of Utah and Davis County for the felonious marijuana distribution scheme required by H.B. 3001.

9. Plaintiff Douglas Arthur Rice ("Rice") is and was at all material times a resident of West Jordan, Salt Lake County, Utah. Rice is the President of EAU. Rice and his wife are full-time caregivers to their adult special-needs daughter, who suffers from Angelman's Syndrome and epilepsy. Their daughter requires cannabis to control her seizures. With prescription medications, she was having between eight and twenty-four seizures each day, usually two to five minutes in length. Adding THC (one of the cannabinoids identified in cannabis) to her daily regimen in Colorado allowed his daughter to have her first seizure-free day in years. Rice is an advocate for enhancing the quality of life for all individuals living with epilepsy and seizure disorders. Rice was a sponsor of the "Application for an Initiative or Referendum," which was filed on June 26, 2017, with the Office of the Lieutenant Governor, and which led to Proposition 2. Rice canvassed for petition signatures in support of Proposition 2, raised funds in support of Proposition 2, and encouraged others to vote in support of Proposition 2. Rice is directly and adversely affected by H.B. 3001 because (1) it severely reduces or eliminates his access to necessary medical cannabis for his daughter, (2) it unconstitutionally undermines or entirely defeats core purposes of Proposition 2, which was advocated by Rice and for which

Rice worked extremely hard and successfully through signature-gathering, fundraising, and the campaign leading up to the passage of Proposition 2, and (3) Rice is a State of Utah and Salt Lake County taxpayer and is opposed to illegal expenditures by the State of Utah and Salt Lake County for the felonious marijuana distribution scheme required by H.B. 3001.

10. Plaintiff Nathan Kizerian ("Mr. Kizerian") and his wife, Plaintiff Shalyce Kizerian ("Ms. Kizerian") are residents of West Bountiful, Davis County, Utah. Mr. Kizerian is a caregiver for Ms. Kizerian, who was diagnosed in April 2017, with stage 4 colon cancer. Initially, Ms. Kizerian had been told by a physician that she had approximately three months left to live. After her diagnosis, she lost 80 pounds in about three months. Ms. Kizerian was so ill that she was mostly unable to walk and was crawling on the floor. She was vomiting frequently and was in severe pain, with a lot of cramping, inflammation, pain in her throat and esophagus, and extremely weak. After trying several alternative medical routes, Ms. Kizerian tried Cousin Andy's Tincture, made with vegetable glycerin, honey, THC and CBD (both of the latter two from cannabis). It brought tremendous relief to Ms. Kizerian; she quit vomiting, she was holding down protein, and she began to walk again without difficulty. Mr. Kizerian made an extract for Ms. Kizerian with a "magic butter" machine. Because he used raw cannabis flower and carboxylated it in an oven, which

created psychoactive THC, Ms. Kizerian would get a "high" whenever she consumed the extract to provide relief for her cancer symptoms. Mr. and Ms. Kizerian desire to use raw, unprocessed cannabis flower so Ms. Kizerian will not experience intoxication. Under H.B. 3001, Mr. Kizerian cannot obtain raw plant to use in a juicer so that Ms. Kizerian will not have to get high, which she dislikes. H.B. 3001 allows only flower in blister packs, which is not available and which will not be plentiful enough for the production of the tincture that is effective in reducing or eliminating the symptoms Ms. Kizerian has suffered. Hence, resort to the black market in Utah for illegal raw flower has been the only option to provide Ms. Kizerian the relief provided by CBD and THCA without being required to endure the psychoactive effects of THS. Mr. and Ms. Kizerian are State of Utah and Davis County taxpayers and are opposed to illegal expenditures by the State of Utah and Davis County for the felonious marijuana distribution scheme required by H.B. 3001.

11. Plaintiff Andrew Talbott, M.D., ("Talbott") is a physician who has extensive knowledge of medical cannabis and has used it effectively for the relief of pain and other symptoms suffered by many of his patients. Under Proposition 2 and the Initiative Statute, Dr. Talbott was not restricted regarding the number of patients for whom he could recommend medical cannabis, which he has a First Amendment

right to do. Under H.B. 3001, he is unconstitutionally limited in the number of patients for whom he can recommend medical cannabis. Also, for Talbott's patients to acquire medical cannabis under H.B. 3001, either (1) Talbott has to set "dosing parameters," including recommended doses, products, and the means of administration, which could be construed under federal law to be a "prescription," threatening Talbott's Drug Enforcement Agency ("DEA") license to prescribe controlled substances or (2) a pharmacist must set the dosing parameters, which would constitute the unlawful practice of medicine and would threaten the pharmacist's DEA license. Talbott is a State of Utah and Summit County taxpayer and is opposed to illegal expenditures by the State of Utah and Summit County for the felonious marijuana distribution scheme required by H.B. 3001.

12. Defendant Gary Herbert ("Governor Herbert") is the Governor of the State of Utah. Governor Herbert has campaigned publicly, including in March of 2018, against Proposition 2. Under Article VII, Section 5 of the Utah Constitution, the Governor is vested with the executive power of the state and has a duty to see that its laws are faithfully executed.

13. Defendant Joseph K. Miner, MD, MSPH, is the Executive Director of the Utah Department of Health. As Executive Director of the Utah Department of Health, Mr. Miner is responsible for the implementation of aspects of the Utah

Medical Cannabis Act, under either the version enacted through Proposition 2 or the version created in H.B. 3001.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this matter pursuant to Utah Code § 78A-5-102(1).

15. This Court has jurisdiction to issue the declaratory judgment sought in this Complaint pursuant to Utah Code § 78B-6-401.

16. Venue is proper in this Court pursuant to Utah Code § 78B-3-307 because the cause of action arose, and Defendant Governor Herbert resides, in Salt Lake County.

GENERAL FACTUAL ALLEGATIONS

THE LEGISLATURE'S REPEATED REFUSALS TO PASS MEDICAL CANNABIS LEGISLATION

17. Advocates for the use of medical cannabis by patients have unsuccessfully attempted to pass several medical cannabis bills in Utah. In 2015, Senator Mark B. Madsen sponsored S.B. 259, which would have allowed individuals with a qualifying illness to, under certain circumstances, possess and use cannabis and cannabis products. In 2016, Senator Mark B. Madsen and Representative Gage Froerer sponsored S.B. 73, the progenitor of Proposition 2, which passed the Senate and was tabled in the House Health and Human Services Committee. Also in 2016,

Senator Evan Vickers and Representative Brad Daw sponsored S.B. 89, which would have provided a system permitting certain uses of medical cannabis. All of those bills were defeated.

18. Because the Utah Legislature had refused to pass legislation providing for reasonable access to medical cannabis, Plaintiffs TRUCE, EAU, Stenquist, and Rice, along with others, supported and campaigned for Proposition 2.

THE PASSAGE OF PROPOSITION 2

19. Plaintiffs Stenquist and Rice, and others, signed "Sponsor Statements" in an "Application for an Initiative or Referendum," which was filed with the Office of the Lieutenant Governor on June 26, 2017, for The Utah Medical Cannabis Act initiative.

20. Plaintiffs TRUCE, EAU, Stenquist, and Rice, and other supporters of Proposition 2, canvassed the state, gathering 153,894 validated signatures, which surpassed the state law requirement that the number of valid signatures must equal 10% of all votes cast for president in the 2016 general election statewide and in at least 26 of 29 state senate districts.

21. On May 29, 2018, Lieutenant Governor Spencer Cox declared that The Utah Medical Cannabis Act initiative was sufficient to be submitted to the voters of

Utah for their approval or rejection. The initiative was placed on the Utah general election ballot for November 6, 2018, and was identified as Proposition 2.

22. On November 6, 2018, Proposition 2 was approved with a vote of approximately 562,072 in favor and 503,558 opposed.

23. The Initiative Statute became effective on December 1, 2018.

THE SPECIAL SESSION CALLED TO SUBVERT PROPOSITION 2

24. On October 4, 2018, Governor Herbert announced a special session of the Utah Legislature to be held on December 3, 2018, for the purpose of enacting a substitute for the Initiative Statute.

25. After the election, on November 15, 2018, Senator Wayne Niederhauser, sent an email to all Utah senators demanding attendance at the special session, saying that "It is important to have every Senator attend the special session. . . . [T]his will be a critical special session and requires each of you to attend. . . . As Senate President, I can compel attendance of absent senators. . . . [D]ue to the importance of the special session, I will not hesitate to order the sergeant-at-arms to find and ensure your attendance . . . . [T]his is one of the few times I'm willing to exercise my discretion to ensure your attendance."

26. The primary purpose of the special session was to drastically alter the system to provide relief from human suffering contemplated by Proposition 2 and radically obstruct and reduce access to medical cannabis.

27. On December 3, 2018, H.B. 3001 was passed by the House of Representatives and the Senate and was signed into law by Governor Herbert.

28. H.B. 3001, with the exception of a few of its provisions that were identified in the text of the bill as going into effect at a later date, went into effect on December 3, 2018.

THE LEGISLATURE'S HISTORIC AND CONTINUING CONTEMPT FOR THE PEOPLE'S RIGHT TO LEGISLATE THROUGH INITIATIVE

29. For many years, the Utah Legislature has demonstrated contempt for citizens' initiatives, abusing its power by endeavoring to enhance its own power while depriving the people of their political power, contrary to the statement in Article I, section 2 of the Utah Constitution that "[a]ll political power is inherent in the people, and all free governments are founded on their authority . . . ." The Utah Legislature has repeatedly placed onerous limitations on the People's power to legislate through initiative, as provided by Article VI, section 1 of the Utah Constitution, including a limitation that was deemed unconstitutional by the Utah Supreme Court. As a result of those onerous limitations, from 1952 through 2014, Utahns have succeeded only 20 times in achieving placement of initiatives on ballots

for a vote by the People. From 1977 through 2017, only two citizen initiatives passed and became law, one of which, providing for protections against civil forfeitures, was later substantially undermined by the Legislature. In 2018, three initiatives received a majority of votes, two of which have been radically altered by the Legislature. One of those is Proposition 2, at issue here. The other is Proposition 3, which provided for vastly expanded Medicaid payments so that economically-disadvantaged people could receive medical services.

30. At the December 3, 2018, special session, numerous legislators communicated their views that it is the Legislature's prerogative to decide policy for the state, irrespective of law created through a citizens' initiative passed by direct democracy, as intended by Article VI, section 1 of the Utah Constitution. For instance, Representative Merrill Nelson stated, "We have the right to override what the people do by initiative. . . . We have a right to moderate the excesses of the initiative." Representative Nelson further stated the Legislature has the right to modify the people's law where the legislators judge it to be necessary. In addition to undermining core purposes of Proposition 2 by the passage of H.B. 3001, the Utah Legislature radically altered Proposition 3, which was passed by a majority of voters to expand access to Medicaid benefits for economically-disadvantaged people, through the passage of S.B. 96.

THE CORE PURPOSES OF PROPOSITION 2

31. Among the core purposes of Proposition 2, as reflected in the official Ballot Title and Impartial Analysis of Proposition 2, were the aims to (emphasis added):

a. "establish a state-controlled process that **allows persons with certain illnesses to acquire and use medical cannabis** and, in certain limited circumstances, **to grow up to six cannabis plants for personal medical use**;" and

b. "authoriz[e] the establishment of **private facilities** that grow, process, test, and sell medical cannabis."

32. The core purposes of Proposition 2 are fully reflected in the twenty-eight-page Initiative Statute.

MATERIAL WAYS IN WHICH H.B. 3001 UNDERMINES AND DEFEATS THE CORE PURPOSES OF PROPOSITION 2

33. H.B. 3001 is over 200 pages long and provides for an exceedingly complicated system for the recommendation, setting of "dosing parameters," cultivation, distribution, and administration of medical cannabis, which is a complete departure from Proposition 2, for which the People—a majority of voters—voted.

34. Contrary to the core purpose of Proposition 2 to provide a free-market system for the delivery of cannabis, which currently works well in nearly all other states that have some form of decriminalized or legalized medical cannabis, H.B. 3001:

a. provides for an untested, cumbersome, bureaucratic mixed system that includes a state "Central Fill Pharmacy" that will ostensibly route marijuana products as ordered to publicly-funded health centers; and

b. replaces the provision for up to more than 30 regulated but privately established dispensaries, which would number up to one per county and up to one per 150,000 people in populous counties, with (1) far fewer Department of Health "shipment distribution locations," which may never actually be operational and which are be prohibited under federal laws, (2) up to 7 private "medical cannabis pharmacies," and (3) eventually, up to 3 additional private "medical cannabis pharmacies" if the state central fill medical cannabis pharmacy is not operational by certain dates.

35. Contrary to the core purpose of Proposition 2 to vastly increase convenient and inexpensive access to medical cannabis and allow persons with certain illnesses to beneficially acquire and use medical cannabis, H.B. 3001 greatly

reduces and unreasonably burdens access in many ways, wholly at odds with Proposition 2, including the following:

a. Under H.B. 3001, specialists certified in neurology, pain medicine and pain management, medical oncology, psychiatry, infectious disease, internal medicine, pediatrics, or gastroenterology may only recommend medical cannabis treatment to up to 300 patients at any given time, with an invasive and burdensome petition process available to specialists to increase the number of patients to whom medical cannabis can be recommended by increments of 100 patients, never to exceed a total of 600 patients, while under the Initiative Statute, there was no arbitrary, paternalistic limit on the number of patients for whom such specialists could recommend medical cannabis.

b. The Initiative Statute provides that an "autoimmune disorder" is a qualifying condition for which a patient can be recommended medical cannabis treatment. H.B. 3001 removes "autoimmune disorder" as a qualifying condition, thus requiring patients suffering from most autoimmune disorders, which affect 8% of the U.S. population (of whom 78% are women), to seek approval from a "Compassionate Use Board,"

without a requirement that the Board be assembled in a timely fashion, nor even to meet more often than quarterly.

c. The Initiative Statute provides that patients living more than 100 miles from a medical cannabis dispensary may grow their own cannabis plants, limited to two flowering plants and four in a vegetative state, for their personal medicinal use, but H.B. 3001 removes all avenues by which a patient could grow cannabis for the patient's own use, instead requiring many patients, some of whom have difficulty with travel, to travel several hours to receive care and medicine because of the limited access to dispensaries.

d. H.B. 3001 imposes an additional onerous burden, nowhere found in the Initiative Statue, that medical providers must register to become qualified medical providers before recommending a medical cannabis treatment, which requires a detailed application, a fee, and completion of four hours of continuing education prior to registration and another four hours of continuing education prior to renewal every two years.

e. The Initiative Statute provided a simple affirmative defense, available effective December 1, 2018, for the use and possession of marijuana if "the individual would be eligible for a medical cannabis card" and if the

individual's "conduct would have been lawful, after July 1, 2020," but H.B. 3001 provides an extremely complex affirmative defense that imposes several additional arbitrary conditions, such as specifying that the cannabis be in a medicinal dosage form, which is defined to exclude unprocessed cannabis flower unless it is in individualized blister packs—which means, because there is currently no place to acquire cannabis meeting that specification, that patients whose medical conditions require the use of unprocessed flower will be unprotected by the affirmative defense provisions of H.B. 3001. Unprocessed flower utilized in its raw form, without smoking, processing, or vaporizing it, has no, or almost no, intoxicating or psychotropic effects because the THCA in unprocessed, unheated raw flower, unlike THC, is not intoxicating or psychotropic.

f. H.B. 3001 requires that businesses selling medical cannabis retain the services of licensed pharmacists, two to three per facility, who, while they are normally trained to distribute many thousands of different drugs and be alert to dangerous interactions, will instead oversee only the distribution of cannabis products, none of which have life-threatening side effects.

g. H.B. 3001, in stark contrast to the Initiative Statute, imposes highly restrictive, arbitrary limits on the forms of medical cannabis allowed to be

consumed, including (1) the exclusion of unprocessed cannabis flower unless it is in individualized blister packs—which currently is not available for purchase anywhere and (2) the prohibition of some of the more common, palatable, and effective forms, including raw, unprocessed flower that has no, or almost no, intoxicating or psychotropic effects, which are commonly supplied to medical cannabis patients and are necessary for some patients. Also, H.B. 3001 prohibits any processing of cannabis, so one is prohibited from making one's oil or canna butter.

h. The Initiative Statute prohibits landlords, except in certain extraordinary and limited circumstances, from refusing to lease to a person solely because of the person's status as a medical cannabis card holder, but H.B. 3001 entirely removes any tenant protections, discriminating against those who rent their homes and unfairly targeting poor people.

i. The Initiative Statute provided access to cannabis for qualifying patients over eighteen years of age. H.B. 3001 significantly restricts access to medical cannabis for young patients by imposing a new requirement, nowhere found in the Initiative Statute, that those under 21 years of age must obtain approval from a state-appointed Compassionate Use Board—an entity which has no timeline for being operational, and no requirement

for meetings more often than quarterly—which will effectively eliminate access for people 18 to 21 years of age until the "Compassionate Use Board" is fully operational and, thereafter, create unreasonable delays and obstacles that are likely to drive many young people to the illegal market for cannabis.

j. H.B. 3001 depersonalizes medical care by disconnecting patients from the ongoing counseling and adjustments they need from a provider of medical cannabis, as well as conversations about strain, strength, and dosage form, that have been long proven to be an important component of titrating dosages and meeting a patient's needs, and, instead, sends them to a "shipment distribution location" to merely pick up an order shipped out from the central fill pharmacy.

k. The Initiative Statute provided that "post-traumatic stress disorder" was a qualifying condition, but H.B. 3001 adds fifteen lines of text specifically limiting access to medical cannabis for patients with post-traumatic stress disorder, including requiring that the patient "is being treated and monitored by a licensed mental health therapist" and, for non-veterans, requiring "face-to-face or telehealth evaluation" with a provider with a doctorate-level degree—thereby excluding all patients who have received

a recommendation by a qualified medical provider but who, for any reason, are not currently being treated and monitored by a therapist and all patients whose mental health treatment has been provided by someone without a doctorate-level degree, such as the vast majority of certified mental health counselors and licensed clinical social workers providing mental health services across Utah.

l. The Initiative Statute allowed medical providers to "recommend" cannabis treatment in certain circumstances, which is protected by the First Amendment to the U.S. Constitution, but H.B. 3001 added that medical providers may also recommend "dosing parameters" (defined as the "quantity, routes, and frequency of administration for a recommended treatment . . ."), which is equivalent, or perilously close, to "prescribing", which is not constitutionally protected and will dissuade medical providers and pharmacists from recommending or providing medical cannabis because they risk criminal liability under federal law—the ultimate effect of which is to burden and reduce or deprive the access patients have to medical cannabis.

THE CONTINUING IRREPARABLE HARM TO PLAINTIFFS AND THEIR ENTITLEMENT TO INJUNCTIVE RELIEF

36. As a result of the passage of H.B. 3001, Plaintiff Stenquist has suffered, continues to suffer, and will in the future suffer irreparable harm, including as follows:

a. Stenquist has a continuing medical need for cannabis to treat pain associated with trigeminal neuralgia and migraines, as well as numerous other symptoms.

b. Stenquist has a continuing medical need for unprocessed cannabis flower as well as medicinal cannabis wax and resin.

c. As of December 1, 2018, until the enactment of H.B. 3001, under the Initiative Statute, Stenquist was free to acquire and use medicinal unprocessed cannabis flower, cannabis wax, and cannabis resin without fear of arrest and criminal conviction under state law.

d. By reason of the passage of H.B. 3001 on December 3, 2018, Stenquist faces, and will continue to face, the possibility of arrest and criminal conviction under state law (1) if she chooses to acquire or use medicinal unprocessed cannabis flower or (2) if she chooses to acquire or use medicinal cannabis wax or resin but is unable to establish that her medical

condition failed to substantially respond to at least two other medicinal dosage forms allowed by H.B. 3001.

e. Because of the passage of H.B. 3001, Stenquist's access in the future to medicinal unprocessed cannabis flower, cannabis wax, and cannabis resin is, and will continue to be, substantially and unreasonably burdened and delayed.

f. Stenquist, in reliance on the constitutional right to legislate by initiative, devoted a great deal of her life over the course of one and a half years to see that Proposition 2 was passed for the benefit of herself and patients across Utah and, by reason of H.B. 3001, is deprived, and will continue to be deprived, of the legal effectiveness of Proposition 2.

g. H.B. 3001 materially defeats, and will continue to materially defeat, numerous core purposes of Proposition 2.

h. H.B. 3001 is legally invalid and unconstitutional under the Supremacy Clause of the United States Constitution, and, hence, is preempted, because it directly conflicts with, and requires state and local health departments throughout Utah and their employees to violate, the CSA and the Drug-Free Workplace Act. Among other things, H.B. 3001 requires state and local health departments to participate in the purchase, sale, transportation,

storage, and distribution of marijuana, a federal felony. Stenquist has deep concerns about the lack of access to medical cannabis that is nearly certain to occur because of the reliance under H.B. 3001 on felonious acts required of the State of Utah and local health departments, as well as their employees and contractors. Stenquist is further concerned about the consequences to state and local governments, including the forfeiture of millions of dollars in federal grants, because of the violations of the CSA and the Drug-Free Workplace Act mandated by H.B. 3001.

i. Substantial public funds have already been expended, and far more will be required in the future, to set up and operate the illegal state and local health department marijuana distribution scheme required under H.B. 3001. As a taxpayer, Stenquist is opposed to the illegal expenditures by the State of Utah and the county governments in carrying out the mandates under H.B. 3001 to set up a state-run and state-operated scheme for the distribution of marijuana.

37. As a result of the passage of H.B. 3001, Plaintiff Rice has suffered, continues to suffer, and will in the future suffer irreparable harm, including as follows:

a. Rice is a caregiver and legal guardian to his adult daughter, who has a continuing need for medicinal cannabis to treat symptoms of Angelman syndrome and epilepsy.

b. Rice's daughter has a continuing medical need for unprocessed cannabis flower.

c. As of December 1, 2018, under the Initiative Statute, Rice was free to acquire, and his daughter was free to use, medicinal unprocessed cannabis flower without fear of arrest and criminal conviction under state law.

d. Because of the passage of H.B. 3001 on December 3, 2018, Rice faces, and will continue to face, the possibility of arrest and criminal conviction under state law if he acquires, possesses, or administers medicinal unprocessed cannabis flower for his daughter.

e. Because of the passage of H.B. 3001, Rice's access in the future to medicinal unprocessed cannabis flower for his daughter will be substantially and unreasonably burdened and delayed.

f. Rice, in reliance on the constitutional right to legislate by initiative, devoted a great deal of his life over the course of one and a half years to see that Proposition 2 was passed for the benefit of his daughter and

patients across Utah and, by reason of H.B. 3001, is deprived and will continue to be deprived, of the legal effectiveness of Proposition 2.

g. H.B. 3001 materially defeats, and will continue to materially defeat, numerous core purposes of Proposition 2.

h. H.B. 3001 is legally invalid and unconstitutional under the Supremacy Clause of the United States Constitution, and, hence, is preempted, because it directly conflicts with, and requires state and local health departments throughout Utah and their employees to violate, the CSA and the Drug-Free Workplace Act. Among other things, H.B. 3001 requires state and local health departments to participate in the purchase, sale, transportation, storage, and distribution of marijuana, a federal felony. Rice has deep concerns about the lack of access to medical cannabis that is nearly certain to occur because of the reliance under H.B. 3001 on felonious acts required of the State of Utah and local health departments, as well as their employees and contractors. Rice is further concerned about the consequences to state and local governments, including the forfeiture of millions of dollars in federal grants, because of the violations of the CSA and the Drug-Free Workplace Act mandated by H.B. 3001.

i. Substantial public funds have already been expended, and far more will be required in the future, to set up and operate the illegal state and local health department marijuana distribution scheme required under H.B. 3001 and, as a taxpayer, Rice is opposed to the illegal expenditures by the State of Utah and the county governments in carrying out the mandates under H.B. 3001 to set up a state-run and state-operated scheme for the distribution of marijuana.

38. As a result of the passage of H.B. 3001, Plaintiffs TRUCE and EAU have suffered, and will continue to suffer, irreparable harm, including as follows:

a. TRUCE's and EAU's members have continuing medical needs for cannabis to treat numerous conditions and symptoms.

b. TRUCE's and EAU's members have a continuing medical need for cannabis in all forms that medicinal cannabis is normally available, including unprocessed cannabis flower, cannabis wax, cannabis resin, and cannabis edibles that do not contain gelatin.

c. As of December 1, 2018, under the Initiative Statute, members of TRUCE and EAU were free to acquire and use all commonly available medicinal forms of cannabis, including unprocessed cannabis flower, cannabis wax,

cannabis resin, and non-gelatin cannabis edibles, without fear of arrest and criminal conviction under state law.

d. As of the passage of H.B. 3001 on December 3, 2018, members of TRUCE and EAU face the possibility of criminal arrest and conviction under state law if they acquire or use medicinal cannabis in a form proscribed by H.B. 3001, including any unprocessed cannabis flower, any cannabis edibles that are not gelatin cubes, and, if the patient's condition has not yet failed to substantially respond to at least two of the medicinal dosage forms allowed by H.B. 3001, any cannabis wax or resin.

e. As of the passage of H.B. 3001, TRUCE's and EAU's members' access in the future to medicinal cannabis will be substantially and unreasonably burdened and delayed.

f. TRUCE's and EAU's members, in reliance on the constitutional right to legislate by initiative, devoted a great deal of their lives over the course of one and a half years to see that Proposition 2 was passed for the benefit of themselves, their family members, and patients across Utah and, by reason of H.B. 3001, are deprived and will continue to be deprived, of the legal effectiveness of Proposition 2.

g. H.B. 3001 materially defeats, and will continue to materially defeat, numerous core purposes of Proposition 2.

h. H.B. 3001 is legally invalid and unconstitutional under the Supremacy Clause of the United States Constitution, and, hence, is preempted, because it directly conflicts with, and requires state and local health departments throughout Utah and their employees to violate, the CSA and the Drug-Free Workplace Act. Among other things, H.B. 3001 requires state and local health departments to participate in the purchase, sale, transportation, storage, and distribution of marijuana, a federal felony. TRUCE, EAU, and their members have deep concerns about the lack of access to medical cannabis that is nearly certain to occur because of the reliance under H.B. 3001 on felonious acts required of the State of Utah and local health departments, as well as their employees and contractors. TRUCE, EAU, and their members are further concerned about the consequences to state and local governments, including the forfeiture of millions of dollars in federal grants, because of the violations of the CSA and the Drug-Free Workplace Act mandated by H.B. 3001.

i. Substantial public funds have already been expended, and far more will be required in the future, to set up and operate the illegal state and local health

department marijuana distribution scheme required under H.B. 3001 and, as taxpayers in counties in Utah and as State of Utah taxpayers, TRUCE's and EAU's members are opposed to the illegal expenditures by the State of Utah and the county governments in carrying out the mandates under H.B. 3001 to set up a state-run and state-operated scheme for the distribution of marijuana.

39. As a result of the passage of H.B. 3001, Plaintiffs Nathan and Shalyce Kizerian have suffered, continue to suffer, and will in the future suffer irreparable harm, including as follows:

a. Ms. Kizerian has a continuing medical need for cannabis to treat pain associated with her colon cancer, as well as numerous other symptoms. Mr. Kizerian, as a caregiver to Ms. Kizerian has a continuing need to acquire and administer to Ms. Kizerian cannabis to treat her pain and other symptoms.

b. Mr. and Ms. Kizerian have a continuing need for raw cannabis plant to use in a juicer so that Ms. Kizerian will not have to be intoxicated by consuming THC by means of products H.B. 3001 allows to be purchased. The only means of obtaining the raw cannabis plant required for the

effective pain treatment and management of Ms. Kizerian for her colon cancer is through the illegal market in Utah.

c. As of December 1, 2018, under the Initiative Statute, Mr. and Ms. Kizerian were free to acquire, and Ms. Kizerian was free to use, medicinal unprocessed cannabis flower, which had no intoxicating effect, without fear of arrest and criminal conviction under state law.

d. Because of the passage of H.B. 3001 on December 3, 2018, Mr. and Ms. Kizerian face, and will continue to face, the possibility of arrest and criminal conviction under state law if they, or either of them, acquire, possess, or administer medicinal unprocessed cannabis flower.

e. Because of the passage of H.B. 3001, Mr. and Ms. Kizerian's access in the future to medicinal unprocessed cannabis flower for Ms. Kizerian's medical and pain-management needs will be substantially and unreasonably burdened and delayed.

f. H.B. 3001 is legally invalid and unconstitutional under the Supremacy Clause of the United States Constitution, and, hence, is preempted, because it directly conflicts with, and requires state and local health departments throughout Utah and their employees to violate, the CSA and the Drug-Free Workplace Act. Among other things, H.B. 3001 requires state and

local health departments to participate in the purchase, sale, transportation, storage, and distribution of marijuana, a federal felony. Mr. and Ms. Kizerian have deep concerns about the lack of access to medical cannabis that is likely to occur because of the reliance under H.B. 3001 on felonious acts required of the State of Utah and local health departments, as well as their employees and contractors. Mr. and Ms. Kizerian are further concerned about the consequences to state and local governments, including the forfeiture of millions of dollars in federal grants, because of the violations of the CSA and the Drug-Free Workplace Act mandated by H.B. 3001.

g. Substantial public funds have already been expended, and far more will be required in the future, to set up and operate the illegal state and local health department marijuana distribution scheme required under H.B. 3001 and, as taxpayers, Mr. and Ms. Kizerian are opposed to the illegal expenditures by the State of Utah and the county governments in carrying out the mandates under H.B. 3001 to set up a state-run and state-operated scheme for the distribution of marijuana.

40. As a result of the passage of H.B. 3001, Plaintiff Talbott has suffered, continues to suffer, and will in the future suffer irreparable harm, including as follows:

a. Talbott, who has tremendous experience and knowledge in the use of medical cannabis for pain relief, pain-management, and relief from nausea and other symptoms for patients suffering from a wide variety of ailments, seeks to provide medical services, including pain relief and pain-management, as well as relief from nausea and other symptoms, with the use of medical cannabis, for patients and prospective patients who will, or are likely to, benefit from the use of medical cannabis.

b. As of December 1, 2018, under the Initiative Statute, Talbott was free to treat many of his patients, and prospective patients, with medical cannabis, without a pharmacist or him dictating "dosing parameters" and without any limit in terms of the number of patients for whom he could recommend medical cannabis.

c. Because of the passage of H.B. 3001 on December 3, 2018, Talbott is unconstitutionally limited in the number of patients for whom he can recommend medical cannabis for the relief of their pain, nausea, and other symptoms.

d. H.B. 3001 is legally invalid and unconstitutional under the Supremacy Clause of the United States Constitution, and, hence, is preempted, because it directly conflicts with, and requires state and local health departments throughout Utah and their employees to violate, the CSA and the Drug-Free Workplace Act. Among other things, H.B. 3001 requires state and local health departments to participate in the purchase, sale, transportation, storage, and distribution of marijuana, a federal felony. Plaintiff Talbott has deep concerns about the lack of access to medical cannabis that is likely to occur because of the reliance under H.B. 3001 on felonious acts required of the State of Utah and local health departments, as well as their employees and contractors. Plaintiff Talbott is further concerned about the consequences to state and local governments, including the forfeiture of millions of dollars in federal grants, because of the violations of the CSA and the Drug-Free Workplace Act mandated by H.B. 3001.

e. Substantial public funds have already been expended, and far more will be required in the future, to set up and operate the illegal state and local health department marijuana distribution scheme required under H.B. 3001 and, as a taxpayer, Plaintiff Talbott is opposed to the illegal expenditures by the State of Utah and the county governments in carrying out the mandates

under H.B. 3001 to set up a state-run and state-operated scheme for the distribution of marijuana.

41. Plaintiffs' remedies at law are not adequate to remedy their past and ongoing injuries.

42. Injunctive relief will not cause hardship to anyone but will protect the rights of Plaintiffs and other residents of Utah (1) to exercise the constitutional right to legislate through initiative; (2) to provide or obtain recommendations by qualified medical providers for the use of medical cannabis without any unconstitutional limit as to the number of patients for whom any medical provider can communicate recommendations for the use of medical cannabis; (3) to receive the freedoms and medicinal and economic benefits sought by voters in passing Proposition 2; (4) to make certain that public funds are not expended illegally; and (5) to ensure that laws passed by the Utah Legislature, such as H.B. 3001, are valid and not in direct conflict with federal laws, in violation of the Supremacy Clause of the United States Constitution.

43. The public interest is benefitted by vindication of the People's constitutional right to legislate through direct-democracy initiatives; by ensuring that public funds are not spent illegally by the state of Utah or any counties or affiliated entities on drug distribution schemes mandated by H.B. 3001 that constitute federal

felonies and violations of the CSA and the Drug-Free Workplace Act; by ensuring that state laws do not require state and county employees, officials, and departments to violate federal criminal laws and other laws that could result in federal felony prosecutions and/or the forfeiture of federal grants for up to five years; and by guaranteeing that state laws that are preempted by federal law are deemed invalid and not used as the basis for requiring the commission of federal felonies by anyone.

44. The public interest is benefitted by restoring access to medical cannabis, as provided by the Initiative Statute, to all qualifying patients.

45. Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief prohibiting Defendants from enforcing, giving effect to, or otherwise taking action pursuant to H.B. 3001 and mandating that the Defendants enforce and give effect to the Initiative Statute.

FIRST CLAIM FOR RELIEF

Violation of the People's Legislative Power Through Direct Democracy - Article VI, Section 1 of the Utah Constitution

46. For and in support of this cause of action, Plaintiffs incorporate by this reference the allegations in the preceding paragraphs.

47. The Utah Constitution, Article I, Section 27, compels "[f]requent recurrence to fundamental principles," which is "essential to the security of individual rights and the perpetuity of free government."

48. The Utah Constitution, Article I, Section 2, provides, as one of those fundamental principles, that "[a]ll political power is inherent in *the people*; and all free governments are founded on *their* authority for *their* equal protection and benefit . . . ." (emphasis added).

49. Through the Utah Constitution, Article VI, Section I, the People vested the Utah Legislature with legislative power, but the People also *retained their power* to legislate through the initiative and referendum process.

50. The Utah Constitution prohibits the Utah Legislature from materially undermining, by repeal or amendment, the core purposes of legislation passed through the initiative process.

51. H.B. 3001 substantially and materially defeats numerous core purposes of the Initiative Statute.

52. Therefore, Plaintiffs are entitled to (1) temporary, preliminary, and permanent injunctive relief prohibiting Defendants from enforcing, giving effect to, or otherwise taking action pursuant to H.B. 3001 and mandating that the Defendants enforce and give effect to the Initiative Statute and (2) the entry of a declaratory judgment declaring that H.B. 3001 violates Article VI, Section 1 of the Utah Constitution and that the Initiative Statute, as enacted by a majority of voters voting

on Proposition 2, is reinstated as Utah law and of the same status it had as law on December 1 and 2 of 2018.

SECOND CLAIM FOR RELIEF

Facial Unconstitutionality and Preemption of H.B. 3001 Because It Directly Conflicts With Federal Law

53. H.B. 3001 requires the Utah Health Department to create and operate a "state central fill" to arrange for the purchase and distribution of marijuana, in direct conflict with the CSA and the Drug-Free Workplace Act.

54. H.B. 3001 requires that all local health departments—which are financed in part by the counties, and many or all of which receive federal grants—to designate one or more location as a "state central fill shipment distribution location" and designate "a sufficient number of personnel to ensure that at least one individual is available at all times during business hours." That mandate by the Utah Legislature is legally invalid and preempted by federal laws because it is in direct conflict with the CSA and the Drug-Free Workplace Act.

55. H.B. 3001 requires local health departments "to distribute state central fill shipments," which are defined as a shipment of cannabis (*i.e.*, a shipment of marijuana), and to participate in arranging for the purchase, distribution, transportation, storage, and sale of a Schedule 1 controlled substance, which is

absolutely forbidden by the CSA and the Drug-Free Workplace Act. Each violation of the CSA is a federal felony.

56. The expenditures of public monies by the State of Utah and by county governments and state and local health departments for creating, setting up, and operating the scheme for the purchase, sale, transportation, storage, and distribution of marijuana are illegal expenditures challenged by all Plaintiffs, who are all state and county taxpayers in Utah and who are deeply concerned about the illegal state-controlled and state-operated felonious marijuana distribution scheme.

57. All Plaintiffs seek to have the Court enjoin the illegal expenditure of public funds for the federally prohibited marijuana distribution scheme under H.B. 3001.

58. All Plaintiffs endeavor to promote the substantial public interest by pursuing in this action an injunction against the enforcement of H.B. 3001 and a declaratory judgment that H.B. 3001 is preempted by federal law and, therefore, invalid, insofar as it requires state and local governments and their health departments to participate in the purchase, sale, transportation, storage, and distribution of marijuana, conduct that is blatantly illegal under federal law.

PRAYER FOR RELIEF

WHEREFORE, pursuant to the claims for relief set forth hereinabove;

(1) Plaintiffs are entitled to a declaratory judgment that H.B. 3001 violates, and that the enactment of H.B. 3001 violated, Article VI, Section 1 of the Utah Constitution.

(2) Plaintiffs are entitled to a declaratory judgment that H.B. 3001, or at least Section 6 thereof, is preempted by federal law, and hence unconstitutional and invalid, because of the direct conflict between H.B. 3001 and federal law.

(3) Plaintiffs are entitled to a declaratory judgment that the Initiative Statute, as enacted by a majority of voters voting on Proposition 2, is reinstated as effective law and of the same status it had as law on December 1 and 2 of 2018.

(4) Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief prohibiting Defendants from enforcing, giving effect to, or otherwise taking action pursuant to, H.B. 3001.

(5) Plaintiffs are entitled to temporary, preliminary, and permanent injunctive relief mandating that the Defendants enforce and give effect to the Medical Cannabis Act as enacted by Proposition 2.

(6) Plaintiffs are entitled to the recovery from the State of Utah of all their fees and costs in this action.

(7) Plaintiffs are entitled to all further relief as deemed by the Court to be just and equitable.

DATED this 3rd day of May 2019.

LAW OFFICES OF ROCKY ANDERSON

/s/ Ross C. Anderson
Ross C. Anderson
Attorney for Plaintiffs